

REMARKS

Claims 1, 2, 5, 7 and 20 are pending in the application. Claims 11-19 and 21 were previously withdrawn. Amendments to claims 1 and 2 are submitted in this response. Claims 3, 4, 6, 8-19 and 21 have previously been canceled without prejudice. Claims 5 and 7 are canceled in the present response without prejudice. The amendments to claims 1 and 2 are submitted in the present response solely in an effort to further prosecution. By these claim amendments and cancellations, Applicants do not disclaim any subject matter to which they are entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997). Full support for the amendments is found in the specification. No new matter has been added by these amendments.

I. 35 U.S.C. § 112, ¶ 1 Enablement Rejections

The Examiner rejected claims 1, 2, 7 and 20 under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement. 16 November 2007 Office Action (“OA”), page 2. In rejecting these claims, the Examiner stated that the specification is enabling for “a method of treating a condition related to resistance to cell death comprising administering to a patient a pharmaceutical composition of wild type azurin of SEQ ID NO: 1.” *Id.*

Without acquiescing to the propriety of the rejection or the Examiner's statements, and solely in an effort to advance prosecution, the amendments to claim 1 reflect the Examiner's statements regarding enablement as follows: “A method of treating a condition related to resistance to cell death, comprising administering to a patient a pharmaceutical composition comprising azurin to promote cell death in a cell demonstrating resistance to cell death wherein said azurin comprises the amino acid sequence of SEQ ID NO: 1.” As this is the scope deemed enabled by the Examiner, the present claims, as amended, are now in condition for allowance and Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1, 2, 7 and 20 under 35 U.S.C. § 112, first paragraph.

II. Nonstatutory Obviousness-Type Double Patenting Rejections

Claims 1, 5 and 20 were rejected based on nonstatutory obviousness-type double patenting based on claims 1-3, 5 and 7-12 of U.S. Patent No. 7,084,105. OA, page 9. Claims 1 and 2 were rejected based on nonstatutory obviousness-type double patenting over U.S. Patent No. 7,084,105 in view of Yamada *et al.*, (PNAS, vol. 99, page 14098-14103, Oct. 2002, applicant's IDS A23). *See*, OA, page 10. Applicants respectfully traverse.

Without acquiescing to the propriety of the rejections, and solely in an effort to advance prosecution, claim 5 has been canceled in the present reply. The Examiner has instructed that a terminal disclaimer in compliance with 37 C.F.R. §1.321(c) may be used to overcome an actual or provisional rejection based on non-statutory double patenting ground. Without acquiescing to the propriety of the Examiner's rejections, and specifically the Examiner's interpretation of what the cited references teach or claim, Applicants respectfully and properly defer addressing the present rejection until there is allowable subject matter in the present application. At that time, a terminal disclaimer will be filed if warranted by the Examiner's rejection in view of the allowed claims.

CONCLUSION

Applicants have properly stated and traversed each of the Examiner's grounds for rejection. Applicants note that the Examiner has previously withdrawn all rejections over the prior art and that the claims are therefore free of the prior art. The Examiner's 35 U.S.C. § 112 enablement rejections have been rendered moot by the present proposed claim amendments such that the rejections no longer pertain to the presently claimed inventions. Accordingly, Applicants believe that the presented claims are in condition for allowance.

If the Examiner has any questions or believes further discussion will aid examination and advance prosecution of the application, a telephone call to the undersigned is invited. If there are any additional fees due in connection with the filing of this amendment, please charge the fees to undersigned's Deposit Account No. 50-1067. If any extensions or fees are not accounted for, such extension is requested and the associated fee should be charged to our deposit account.

Respectfully Submitted,



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